

117<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 3843

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## AN ACT

To protect competition and promote antitrust enforcement by adjusting premerger filing fees to increase antitrust enforcement resources.

1        *Be it enacted by the Senate and House of Representa-*  
2        *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

2 (a) SHORT TITLE.—This Act may be cited as the  
3 “Merger Filing Fee Modernization Act of 2022”.

4 (b) TABLE OF CONTENTS.—The table of contents of  
5 this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—MODERNIZING MERGER FILING FEE COLLECTIONS;  
ACCOUNTABILITY REQUIREMENTS; LIMITATION ON FUNDING

Sec. 101. Modification of premerger notification filing fees.

Sec. 102. Reporting requirements for merger fee collections.

TITLE II—DISCLOSURE OF SUBSIDIES BY FOREIGN  
ADVERSARIES

Sec. 201. Findings and purpose.

Sec. 202. Mergers involving foreign government subsidies.

TITLE III—VENUE FOR STATE ANTITRUST ENFORCEMENT

Sec. 301. Venue for State Antitrust Enforcement.

6 **TITLE I—MODERNIZING MERG-**  
7 **ER FILING FEE COLLEC-**  
8 **TIONS; ACCOUNTABILITY RE-**  
9 **QUIREMENTS; LIMITATION**  
10 **ON FUNDING**

11 **SEC. 101. MODIFICATION OF PREMERGER NOTIFICATION**  
12 **FILING FEES.**

13 Section 605 of Public Law 101–162 (15 U.S.C. 18a  
14 note) is amended—

15 (1) in subsection (b)—

16 (A) in paragraph (1)—

17 (i) by striking “\$45,000” and insert-  
18 ing “\$30,000”;

1 (ii) by striking “\$100,000,000” and  
2 inserting “\$161,500,000”;

3 (iii) by striking “2004” and inserting  
4 “2023”; and

5 (iv) by striking “2003” and inserting  
6 “2022”;

7 (B) in paragraph (2)—

8 (i) by striking “\$125,000” and insert-  
9 ing “\$100,000”;

10 (ii) by striking “\$100,000,000” and  
11 inserting “\$161,500,000”;

12 (iii) by striking “but less” and insert-  
13 ing “but is less”; and

14 (iv) by striking “and” at the end;

15 (C) in paragraph (3)—

16 (i) by striking “\$280,000” and insert-  
17 ing “\$250,000”; and

18 (ii) by striking the period at the end  
19 and inserting “but is less than  
20 \$1,000,000,000 (as so adjusted and pub-  
21 lished);”; and

22 (D) by adding at the end the following:

23 “(4) \$400,000 if the aggregate total amount  
24 determined under section 7A(a)(2) of the Clayton  
25 Act (15 U.S.C. 18a(a)(2)) is not less than

1       \$1,000,000,000 (as so adjusted and published) but  
2       is less than \$2,000,000,000 (as so adjusted and  
3       published);

4           “(5) \$800,000 if the aggregate total amount  
5       determined under section 7A(a)(2) of the Clayton  
6       Act (15 U.S.C. 18a(a)(2)) is not less than  
7       \$2,000,000,000 (as so adjusted and published) but  
8       is less than \$5,000,000,000 (as so adjusted and  
9       published); and

10           “(6) \$2,250,000 if the aggregate total amount  
11       determined under section 7A(a)(2) of the Clayton  
12       Act (15 U.S.C. 18a(a)(2)) is not less than  
13       \$5,000,000,000 (as so adjusted and published).”;  
14       and

15           (2) by adding at the end the following:

16           “(c)(1) For each fiscal year commencing after Sep-  
17       tember 30, 2023, the filing fees in this section shall be  
18       increased by an amount equal to the percentage increase,  
19       if any, in the Consumer Price Index, as determined by  
20       the Department of Labor or its successor, for the year  
21       then ended over the level so established for the year ending  
22       September 30, 2022.

23           “(2) As soon as practicable, but not later than Janu-  
24       ary 31 of each year, the Federal Trade Commission shall  
25       publish the adjusted amounts required by paragraph (1).

1 “(3) The Federal Trade Commission shall not adjust  
2 amounts required by paragraph (1) if the percentage in-  
3 crease described in paragraph (1) is less than 1 percent.

4 “(4) An amount adjusted under this section shall be  
5 rounded to the nearest multiple of \$5,000.”.

6 **SEC. 102. REPORTING REQUIREMENTS FOR MERGER FEE**  
7 **COLLECTIONS.**

8 (a) **FTC AND DOJ JOINT REPORT.**—For each of fis-  
9 cal years 2023 through 2027, the Federal Trade Commis-  
10 sion and Department of Justice shall jointly and annually  
11 report to the Congress on the operation of section 7A of  
12 the Clayton Act (15 U.S.C. 18a) and shall include in such  
13 report the following:

14 (1) The amount of funds made available to the  
15 Federal Trade Commission and the Department of  
16 Justice, respectively, from the premerger notification  
17 filing fees under this section, as adjusted by the  
18 Merger Filing Fee Modernization Act of 2022, as  
19 compared to the funds made available to the Federal  
20 Trade Commission and the Department of Justice,  
21 respectively, from premerger notification filing fees  
22 as the fees were determined in fiscal year 2022.

23 (2) The total revenue derived from premerger  
24 notification filing fees, by tier, by the Federal Trade

1 Commission and the Department of Justice, respec-  
2 tively.

3 (3) The gross cost of operations of the Federal  
4 Trade Commission, by Budget Activity, and the  
5 Antitrust Division of the Department of Justice, re-  
6 spectively.

7 (b) FTC REPORT.—The Federal Trade Commission  
8 shall include in the report required under subsection (a),  
9 in addition to the requirements under subsection (a), for  
10 the previous fiscal year—

11 (1) for actions with respect to which the record  
12 of the vote of each member of the Federal Trade  
13 Commission is on the public record of the Federal  
14 Trade Commission, a list of each action with respect  
15 to which the Federal Trade Commission took or de-  
16 clined to take action on a 3 to 2 vote; and

17 (2) for all actions for which the Federal Trade  
18 Commission took a vote, the percentage of such ac-  
19 tions that were decided on a 3 to 2 vote.

20 (c) SUMMARY.—The Federal Trade Commission and  
21 the Department of Justice shall make the report required  
22 under subsection (a) available to the Committees on the  
23 Judiciary of the House of Representatives and of the Sen-  
24 ate, and shall, for fiscal years 2023 through 2027, no later  
25 than July 1, present a summary of the joint annual report

1 for the preceding fiscal year, including the information re-  
2 quired in subsections (a) and (b) of this section, to the  
3 Committees on the Judiciary of the House of Representa-  
4 tives and of the Senate.

5 **TITLE II—DISCLOSURE OF SUB-**  
6 **SIDIES BY FOREIGN ADVER-**  
7 **SARIES**

8 **SEC. 201. FINDINGS AND PURPOSE.**

9 (a) FINDINGS.—Congress finds the following:

10 (1) Foreign subsidies, which can take the form  
11 of direct subsidies, grants, loans (including below-  
12 market loans), loan guarantees, tax concessions,  
13 preferential government procurement policies, or  
14 government ownership or control, can distort the  
15 competitive process by enabling the subsidized firm  
16 to submit a bid higher than other firms in the mar-  
17 ket, or otherwise change the incentives of the firm  
18 in ways that undermine competition following an ac-  
19 quisition.

20 (2) Foreign subsidies are particularly problem-  
21 atic when granted by countries or entities that con-  
22 stitute a strategic or economic threat to United  
23 States interests.

24 (3) The Made in China 2025 plan, states that  
25 the Chinese Communist Party will “support enter-

1       prises to carry out mergers and acquisitions (M&A),  
2       equity investment, and venture capital overseas”.

3           (4) The 2020 report to Congress from the bi-  
4       partisan U.S.-China Economic and Security Review  
5       Commission concluded that the Chinese Government  
6       subsidizes companies with a goal of their expanding  
7       into the United States and other countries, finding  
8       that “[t]his process assists Chinese national cham-  
9       pions in surpassing and supplanting global market  
10      leaders”. The report warns that the risk is particu-  
11     larly acute when it comes to emerging technologies,  
12     where China seeks to “surpass and displace the  
13     United States altogether [and that] [f]ailure to ap-  
14     preciate the gravity of this challenge and defend  
15     U.S. competitiveness would be dire . . . [and] risks  
16     setting back U.S. economic and technological  
17     progress for decades”.

18           (5) In remarks before the Hudson Institute on  
19       December 8, 2020, FTC Commissioner Noah Phil-  
20       lips stated, “[O]ne area where antitrust needs to  
21       reckon with the strategic interests of other nations  
22       is when we scrutinize mergers or conduct involving  
23       state-owned entities . . . companies that are con-  
24       trolled, to varying degrees, by the state . . . [and]

1 often are a government tool for implementing indus-  
2 trial policies or to protect national security”.

3 (b) PURPOSE.—The purpose of this section is to re-  
4 quire parties providing pre-merger notifications to include  
5 in the notification required under section 7A of the Clay-  
6 ton Act (15 U.S.C. 18a) information concerning subsidies  
7 they receive from countries or entities that are strategic  
8 or economic threats to the United States.

9 **SEC. 202. MERGERS INVOLVING FOREIGN GOVERNMENT**  
10 **SUBSIDIES.**

11 (a) DEFINITION.—In this section, the term “foreign  
12 entity of concern” has the meaning given the term in sec-  
13 tion 40207 of the Infrastructure Investment and Jobs Act  
14 (42 U.S.C. 18741(a)).

15 (b) ACCOUNTING FOR FOREIGN GOVERNMENT SUB-  
16 SIDIES.—A person required to file a notification under  
17 section 7A of the Clayton Act (15 U.S.C. 18a) that re-  
18 ceived a subsidy from a foreign entity of concern shall in-  
19 clude in such notification content regarding such subsidy.

20 (c) AUTHORITY OF ANTITRUST REGULATORS.—The  
21 Federal Trade Commission, with the concurrence of the  
22 Assistant Attorney General in charge of the Antitrust Di-  
23 vision of the Department of Justice, and in consultation  
24 with the Chairperson of the Committee on Foreign Invest-  
25 ment in the United States, the Secretary of Commerce,

1 the Chair of the United States International Trade Com-  
2 mission, the United States Trade Representative, and the  
3 heads of other appropriate agencies, and by rule in accord-  
4 ance with section 553 of title 5, United States Code, shall  
5 require that the notification required under subsection (b)  
6 be in such form and contain such documentary material  
7 and information relevant to a proposed acquisition as is  
8 necessary and appropriate to enable the Federal Trade  
9 Commission and the Assistant Attorney General in charge  
10 of the Antitrust Division of the Department of Justice to  
11 determine whether such acquisition may, if consummated,  
12 violate the antitrust laws.

13 (d) EFFECTIVE DATE.—Subsection (b) shall take ef-  
14 fect on the date on which the rule described in subsection  
15 (c) takes effect.

## 16 **TITLE III—VENUE FOR STATE** 17 **ANTITRUST ENFORCEMENT**

### 18 **SEC. 301. VENUE FOR STATE ANTITRUST ENFORCEMENT.**

19 Section 1407 of title 28, United States Code, is  
20 amended—

21 (1) in subsection (g) by inserting “or a State”  
22 after “United States” and striking “; but shall not  
23 include section 4A of the Act of October 15, 1914,  
24 as added July 7, 1955 (69 Stat. 282; 15 U.S.C.  
25 15a)”; and

1 (2) by striking subsection (h).

Passed the House of Representatives September 29,  
2022.

Attest:

*Clerk.*

117<sup>TH</sup> CONGRESS  
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